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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,550	12/22/1999	OLAF ERIK ALEXANDER ISELE	CM-1519Q	2485
27752	7590	02/24/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			ANDERSON, CATHARINE L	
		ART UNIT	PAPER NUMBER	
		3761	19	
DATE MAILED: 02/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/446,550	ISELE ET AL.
	Examiner	Art Unit
	C. Lynne Anderson	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 12/3/03.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrin et al. (5,628,737) in view of Tapp (5,169,712).

Dobrin discloses all aspects of the claimed invention with the exception of a particulate filler material imbedded in the polymeric film layer. Dobrin discloses an absorbent article 20, as shown in figure 2, comprising a core region 74, and a chassis region 76 surrounding the core region 74. The article 20 further comprises a laminate 95, as shown in figure 3, which extends into both the core region 74 and the chassis region 76 to form a core backsheet and a chassis backsheet. The laminate 95 comprises a polymeric film layer 26, as described in column 6, lines 42-43, and a fibrous layer 90, as described in column 9, lines 51-52. The laminate 95 is a breathable, unitary layer. The laminate 95 comprises apertures 84 in the chassis region 76, giving the chassis region 76 a higher degree of breathability than the core region 74, and therefore the MVTR value of the core region 74 is lower than that of the chassis region 76.

Tapp discloses a breathable laminate comprising a polymeric film layer and a fibrous layer, as described in column 4, lines 39-42 and 60-61. The polymeric film layer

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has a basis weight of greater than 25 gsm, as disclosed in column 16, lines 29-32, and comprises a polymeric matrix and a particulate filler material, as disclosed in column 6, lines 65-68. The breathability of the laminate is enhanced by the formation of cracks around the particulate filler material, as disclosed in column 13, lines 15-18.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the laminate of Dobrin using the polymeric film layer of Tapp to increase the breathability of the laminate.

With respect to the disclosure in the instant claim of the cracks being formed using an activation process whereby the laminate is passed through at least one roll pair comprising engaging ridges and grooves, it is the examiner's position that this limitation renders the claim a product-by-process claim. The patentability of a product does not depend on its method of production. The article disclosed by Dobrin in view of Tapp comprises the structure of the claimed invention.

With respect to claim 2, Dobrin discloses the polymeric film layer 26 is wider than the fibrous layer 90, as described in column 10, lines 7-9.

With respect to claims 3 and 4, Tapp discloses a MVTR of at least 500 g/24hr/m<sup>2</sup>, as described in column 5, lines 42-43.

With respect to claims 5 and 6, Dobrin discloses all aspects of the claimed invention but remains silent as to how much greater the transmission rate of the chassis region is than the transmission rate of the core region. The chassis region is apertured to increase its breathability, and therefore has a higher transmission rate than the core region.

With respect to claim 7, Tapp discloses the filler material is calcium carbonate, as described in column 6, lines 67-68.

With respect to claim 8, Tapp discloses the polymeric layer has a basis weight of less than 50 gsm, as described in column 16, lines 29-32.

With respect to claim 9, Tapp discloses the fibrous layer has a basis weight of about 10 gsm, as described in column 17, lines 41-43, which in combination with the polymeric layer, would have a basis weight of less than 70 gsm.

With respect to claim 10, Dobrin discloses the fibrous layer 90 is a non-woven web, as described in column 9, line 52.

With respect to claims 11 and 13, Tapp discloses combining the polymeric layer and the fibrous layer by thermobonding and adhesive bonding, as described in column 23, lines 60-64.

With respect to claim 12, Tapp discloses extruding the fibrous layer, as described in column 20, lines 21-23, and the combination of the layers disclosed by Tapp would result in the product as claimed.

With respect to claim 14, Dobrin discloses a baby diaper, as shown in figure 1.

### ***Response to Arguments***

With respect to claim 1, it is the examiner's position that the amendment further defining the cracks as being formed using an activation process whereby the laminate is passed through at least one roll pair comprising engaging ridges and grooves renders the claim a product-by-process claim. The patentability of a product does not depend

on its method of production. The article disclosed by Dobrin in view of Tapp comprises the structure of the claimed invention.

With respect to claims 3 and 4, it is noted that the features upon which applicant relies (i.e., the method of measuring the MVTR) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claim 12, the claim discloses a product-by-process limitation. Tapp discloses an extruded layer that is combined with a film layer. Tapp therefore discloses the identical final product as the claimed invention.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLA  
cla  
February 20, 2004

  
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